आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
` C' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री चंद्र पूजारी, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**]**

आयकर अपील सं./I.T.A.Nos. 2130 & 2131/Mds/2013
निर्धारण वर्ष /Assessment years : 2009-10 & 2010-2011

The Handloom Export Promotion Council, No.34, Cathedral Garden Road, Nungambakkam, Chennai 600 034	**Vs.**	The Assistant Director of Income Tax (Exemptions) –IV, Chennai
[PAN AAATH 1714L]		
(अपीलार्थी/Appellant)		**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri. K. Balasubramanian, Advocate

प्रत्यर्थी की ओर से /Respondent by : Shri. A.V. Sreekanth, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 23-07-2015
घोषणा की तारीख /Date of Pronouncement : 28-08-2015

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

These appeals by the assessee are directed against different orders of the Commissioner of Income-tax (Appeals)-VII, Chennai for the above assessment years. Since the issue involved in these appeals are common in nature and only change in figures of disallowance,

these appeals are combined, heard together, and disposed of by this order for the sake of convenience.

2. The common grounds in these appeals are follows:-

> *1. The learned Assessing Officer erred in holding that assessee is not eligible for exemption u/s.11 of the Act*
>
> *2.1 The learned Commissioner of Income Tax (Appeals) though agreed that assessee is entitled to for exemption u/s.11 of the Act, erred in holding that to the extent of ₹2,72,90,563/- spent outside India assessee is not entitled to exemption u/s.11(1)(a) of the Act.*
>
> *2.2 They failed to appreciate that the assessee received 'tied up grants'' from GOI and participation fees from Members for meeting the above expenditure of conducting trade fairs, advt. etc., outside India ; such receipts are not part and parcel of its income and hence is outside the purview of Sec. 11.*

The assessee filed additional grounds as under:-

> *''1.1 The authorities below failed to appreciate that assessee received tied up grants of ₹1,43,76,117/- from GOI (which was credited to separate bank account for that purpose) and participation fees from Members to the extent of ₹3,60,68,121/- which are not income of the assessee and which can be utilsied only for the purpose for which it was granted and therefore they erred in bringing to tax the sum of ₹5,04,44,238/-*
>
> *1.2 They failed to appreciate that the above being ''tied up grants' are not part and parcel of its income from deductions and hence is outside the purview of Sec.11.*
>
> *1.3 They failed to appreciate the proof, by way of grants Sanction letters of GOI, with rider that if such grants are not utilized for the purpose for which the sanction is i ntended, the appellant has to return back such grants to GOI and that utilization certification from CA has to be submitted to GOI. Assessee has fully complied*

> *with these conditions and hence the above sum is not income of assessee. Vide decisions reported in 288 ITR 106 & 306 ITR 153.*

The assessee also filed additional evidences under Rule 29 of Income Tax Rules (Appellate Tribunal) Rules 1963 read as under**:-**

> *''In connection with the above appeals, appellant, in support of its additional grounds, (filed in May,2014) that ''grants-in-aid'' received by it from Government of India was for the specific purpose for which it was granted, that the said grants cannot be utilized for any other purpose other than the one for which it was granted and hene the same, being ''tied up grants'' is not its income, filed evidence, covered by items (9) to 15 and (17) to (22) of Paper Book on 16.07.2014 for both the above assessment years*
>
> *Appellant prays that Hon'ble Bench may be pleased to admit the above items as the same are vital for deciding the question whether addition made under section 11(1)(a) of the Income Tax Act, 1961 is correct or not.*

3. The ld. Authorised Representative for assessee at the time of hearing requested to admit additional grounds as well as additional evidences filed above as the assessee bonafidely not filed before the lower authorities.

4. Considering the plea of the assessee and judgment of the Supreme Court in the case of *National Thermal Power Co. Ltd vs. CIT, 229 ITR 383*, ''wherein held that the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee, notwithstanding the fact the same was not raised before the lower authorities", we inclined to admit the additional grounds as well as the additional evidences for adjudication.

5. Coming to the facts of the case for the assessment year 2010-2011, the assessee filed its return on 20.10.2010 admitting nil income. The return was processed u/s 143(1) of the Act on 20.09.2011. The case was selected for scrutiny and notice u/s 143(2) of the Act was issued. In response, the authorized representative of the assessee appeared before the Assessing Officer. After considering the details of the case, the Assessing Officer completed the assessment u/s 143(3) of the Act on 31.01.2013 determining the total income at ₹52,35,216/-. During the course of assessment proceedings the Assessing Officer found that the assessee was in receipt of participation fees, membership fees, advertisement charges, service charges, sale of publication and. news letters, etc. The Assessing Officer was of the view that these receipts clearly fall within the ambit of amended provisions of sec.2(15) of the Act as the assessee's object was of general public utility and the activities of the assessee was in the nature of trade, commerce or business. Hence, the Assessing Officer held that the assessee was not eligible for exemption u/s 11 of the Act for both the assessment years. The Assessing Officer treated the assessee as AOP and taxed accordingly. The Depreciation claimed for the assessment year under consideration was disallowed by the

Assessing Officer. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

6. The Commissioner of Income Tax (Appeals) observed that a perusal of the assessment order and the arguments advanced by the assessee against the denial of exemption u/s 11 of the Act reveals that the assessee was entitled to exemption u/s 11 of the Act provided the assessee satisfies sec.11(1)(a) of the Act. For the sake of clarity, sec.11(1)(a) of the Act was reproduced as under:

> *Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income –*
>
> *(a) Income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India ; and, where*
>
> .....

It means that exclusion from total income was granted in respect of only that part of income was applied for charitable or religious purposes in India as specified in the deed of trust or in the memorandum of objects of the trust. The application should be on such purposes in India. In the instant case, as seen from the accounts of the assessee, the amount spent exceeds 85% of the total income and hence minimum amount to be set apart

u/s 11(2) of the Act was nil for AY 2009-10 according to the assessee. The assessee therefore means that it spent its income wholly for charitable or religious purposes and hence exempted *u/s* 11(1)(a) of the Act. A perusal of accounts of the assessment year 2009-10 reveals that the entire expenditure was not spend/applied in India. During the assessment year 2009-10, the assessee spent ₹5,61,90,847/- abroad as per Income and Expenditure account as promotional expenses. The details are as under:-

Advertisement & Publication	: ₹	8,02,937/-
Exhibitions	: ₹	2,89,78,549/-
Member Exports grant	: ₹	2,43,81,500/-
Design studios at Handloom Clusters	: ₹	20,27,861/-
Total	₹	5,61,90,847/-

Expenditure in foreign currency was ₹2,55,74,281/- towards other promotional expense of Handloom exports during that period. The above sums were spent outside India as revealed by the annual reports of assessment 2009-10. It was in violation of sec.11(1)(a) of the Act which stipulates that income shall not be included in the total income to the extent such income was

applied to charitable or religions purposes in India. Therefore, the assessee was not entitled to exemption u/s 11(1)(a) of the Act as claimed by it. But sec.11(1)(c) of the Act provides for exemption in such type of cases. Therefore, the assessee was asked to offer its reply regarding its eligibility u/s 11(1)(c) of the Act vide letter dated 26.09.2013. The assessee was further asked to clarify the applicability of sec.11(1)(c) of the Act by this office letter dated 04.10.2013 also. The assessee in its letter dated 14.10.2013 stated that it claimed exemption u/s 11(1)(a) and not u/s 11(1)(c)(ii) of the Act because only in those cases where sec.11(1)(c) was applicable, the permission of the Board has to be obtained in order to claim such income exempt u/s. 11(1). Since neither the main section nor the proviso there under was applicable to the assessee, there was no necessity for the assessee to seek the permission of the CBDT. It was also stated that the whole of expenditure were not incurred outside India but only a part of it. To the extent of expenditure incurred in India, the same is not attracted by any of the sub-sections of sec. 11 of the Act. The assessee's objections was carefully considered by the Commissioner of Income Tax (Appeals) and found not tenable for the following reasons:-

(a) The appellant itself admitted in its letter dated 14.10.2013 that some expenditure was incurred outside India in both the assessment year. 2009-10. The annual reports of the appellant also confirm the expenditure outside India.

(b) Sec.11(1)(a) stipulates application of income in India or income accumulated or set apart for application in India.

(c) As the appellant applied/spent outside India as per its own admission, it is not entitled to claim exemption u/s ll(l)(a) of the Act.

(d) Regarding the contention that sec.11(1)(c)(i) of the Act is not applicable to the – appellant because CIT(A) himself did not invoke this sub-section. It is immaterial to the claim of exemption.

(e) The appellant tries to argue that sec.11(1)(c) is not applicable to it and sec.11(1)(a) alone is applicable. This does not hold water as .sec.11(1)(a) clearly says that application /spending should be for charitable or religious purposes in India.

(f) Sec.11(1)(c) was introduced with a view. to help the assessee who have to spend outside India who are otherwise not entitled to exemption u/s 11(1)(a) of the Act. Actually sec.11(1)(c) is a beneficial provision and the only. condition is to obtain the permission of the Board.

(g) Since the assessee did not obtain the approval of the Board, it is in a cleft stick and tries to argue that there is no necessity to seek the permission of the Board.

Governments do not forego their revenue in favour of charity spent outside their countries as held in *England vs Webb(LR) 1898 AC 758, 762(PC); Canille & Henry Dreyfus Foundation*

Inc. vs IRC (1954) 2 AN ER 466(CA). In conformity with this policy, the exemption that was being granted before 1952 in respect of charitable or religious expenditure outside India was withdrawn by the IT Amendment Act 1953 w.e.f. 01.04.1952. Contemporaneously with the withdrawal, power was, however, granted to the Central Board of Revenue to exclude from total income, incomes of trusts created before 01.04.1952 to the extent to which they are applied i.e. spent for charitable or religious purposes outside India, whatever be the kind of charity. In respect of trusts created after 01.04.1952, a similar power to exclude was granted to the Board by the I.T. (Amendment) Act (XV of 1955) with effect from 01.04.1955. But the power was restricted to such expenditure outside India which was applied or spent for purposes which tended to promote international welfare in which India was interested and not for any other kind of charity. The exemption does not operate in either of the above case unless the Board by a general or special order has directed the exclusion of such income from the total income of the assessee: These features under the Act of 1922 are continued under the Act of 1961

also. To sum up the position was this :

i) No exemption is available in respect of trusts for charitable purposes outside India except under a general or special order of the Board.

ii) The Board could grant exemption in respect of later deeds only in the limited cases where such purposes intended to promote international welfare.

In view of the above position, the Commissioner of Income Tax (Appeals) has directed the assessee to show cause as to why enhancement of income should not be done as per sec.251(1) of the Act by this office letter dated 17.10.2013. In response, the ld. Authorised Representative for assessee stated that the AO brought to tax the net profit after allowing expenses for earning the net profit but without allowing depreciation for the assessment year under consideration. The ld. Authorised Representative for assessee also stated that the amount spent abroad was allowable u/s 37(1) of the Act especially under the circumstances when status of the assessee was changed to AOP from that of a trust with advancement of any other object of general public utility u/s 2(15) of the Act. It was also argued that the whole net surplus was not taxable if the CIT(A) is inclined to treat the assessee as trust with advancement of any other object of

general public utility. The assessee's letter dated 21.10.2013 in response to this office letter dated 17.10.2013 was vague and tangential to the issues raised. Sec.37(1) details with deductions permissible under the head "profits and gains of business or profession" and not related to the issues in question. Since the assessee claimed the entire expenditure as application, the question asked was how the expenditure shown under the head "promotional expenses at abroad" in their annual reports is allowable u/s.11 of the Act. For his specific question, there was no answer from the assessee. Therefore the arguments of the ld. Authorised Representative for assessee are not relevant to the issues involved in the appeals and hence rejected devoid of merit. The Commissioner of Income Tax (Appeals) considered the assessee was not entitled to exemption u/s.11(1)(a) of the Act to the extent such income was not applied/spent for charitable purposes in India. The assessee was also not eligible for exemption u/s.11(1)(c) of the Act as the assessee did not obtained permission from the Board. Therefore, the amount spent outside India both the assessment year under consideration are to be brought to tax. The Commissioner of Income Tax (Appeals) directed the Assessing Officer to tax ₹5,61,90,847/- for the assessment year

2009-2010. Against, this the assessee is in appeal before us.

7. We have heard both the parties and perused the material on record. The main contention of the asseseee's counsel is that for the above reasons exemption u/s.11 of the Act was denied to the assessee which was overruled by the Commissioner of Income Tax (Appeals). Further, he invoked provisions of section 11(1)(a) of the Act so as to hold that assessee is not eligible for exemption as the assessee spent the money outside India. Before us, the ld. Authorised Representative for assessee filed a copy of grant sanctioned letter of Ministry of Commerce & Industry, dated 30.12.2008 placed at paper book at page No.184 and another letter dated 19.05.2005 placed at paper book at Page No.188. Further, the assessee also filed the following documents.

Sl. No	Particulars	Paper book at Page No.
1	Assessment year 2009-10, Annual report indicating grants from 2 Ministries	113
2	Assessment year 2009-10, statement showing details of grants from Ministry of Textiles	126
3	Assessment year 2009-10, grants-in-aid sanction letters from Ministry of Textiles	128,136, 140,146, 156, 166, 174 & 178
4	Assessment year 2009-10, Utilization certificates	142, 150, 152, 162, 172, 180
5	Assessment year 2009-10, statement showing details of grants from Ministry of Commerce	182
6	Assessment year 2009-10, Grants – in-aid sanction letters from Ministry of Commerce	184, 188, 192
7	Assessment year 2009-10, utilization certificate	186

8	Assessment year 2009-10, Statement showing details of grants from Ministry of Textiles	230
9	Assessment year 2009-10, grants-in-aid letters from Ministry of Textiles	244
10	Assessment year 2009-10, utilization certificate	246, 254, 260, 268, 272, 280, 286, 294, 302, 312, 322, 330, 334, 338 & 342
11	Assessment year 2009-10, statement showing details of grant received from Ministry of Commerce	348
12	Assessment year 2009-10, Grants in aid sanction letters from Ministry of Commerce	356, 360
13	Assessment year 2009-10, utilization certificate	354

The above documents were not placed before the Commissioner of Income Tax (Appeals) hence, it is appropriate to reconsider this issue afresh in the light of the order of the Tribunal in the case *Nirmal Agricultural Society vs. ITO 71 ITD 153 (Hyd)* wherein that

> *8. We considered the matter in detail. The assessee has not been granted registration under section 12A, as the CIT, Guntur, thought it fit to refuse to condone the long delay caused by the assessee in applying for the registration. Therefore, the Assessing Officer had no other go but to complete the assessments in the status of AOP and also closing his eyes towards section 11 and section 13. To that extent, we are in agreement with the Assessing Officer, as he has acted only according to will of law.*
>
> *9. But as far as the contents of the assessments are concerned, we find much force in the contentions advanced by the assessee. Even when the assessee has been assessed as AOP deprived of section 11 benefits, the Assessing Officer could assess only net income of the assessee and not gross receipts. As far as the assessee is concerned, construction of houses, reclamation of land, etc., are part of its regular*

activities. Houses are built on the land of poor agriculturists. The assessee-society has no legal title or right over the land or houses of those villagers/agriculturists who are the beneficiaries. The purpose and activity of the assessee-society is to engage in such charitable activities. Whatever amount has been spent on those programmes/projects, they were spent in the usual course of carrying on its acclaimed objects. Therefore, there is no basis whatsoever, factual or legal, to hold that the amounts spent by the assessee in constructing houses or reclaiming land are capital expenditure. As far as the assessee is concerned, those expenses are revenue expenses. The assessee has no right or title over those properties. Those expenses were incurred as part of its normal activities for which the society was formed. Therefore, the money spent by the assessee-society in constructing houses, reclaiming the land, for non-formal education, etc., has to be allowed as deduction in the computation of income.

10. The grants received from Bread for the World were for specific purposes. The grants which are for specific purposes do not belong to the assessee-society. Such grants do not form corpus of the assessee or its income. Those grants are not donations to the assessee so as to bring them under the purview of section 12 of the Act. Voluntary contributions covered by section 12 are those contributions freely available to the assessee without any stipulation which the assessee could utilise towards its objectives according to its own discretion and judgment. Tied-up grants for a specified purpose would only mean that the assessee, which is a voluntary organisation, has agreed to act as a trustee of a special fund granted by Bread for the World with the result that it need not be pooled or integrated with the assessee';s normal income or corpus. In this case, the assessee is acting as an independent trustee for that grant, just as same trustee can act as a trustee of more than one trust. Tied-up amounts need not, therefore, be treated as amounts which are required to be considered for assessment, for ascertaining the

amount expended or the amount to be accumulated.

11. The assessee should have actually credited that grant in the personal account of the donor, Bread for the World and any amount spent against that grant should have been debited to that separate account of the donor. That incoming and outgoing need not be reflected in the income and expenditure account of the assessee. At the end of the project, the balance, if any, available to the credit of Bread for the World, the donor, could be treated as income of the assessee, if the donor did not insist for the repayment of the balance amount.

12. Therefore, in the light of the examination of the facts of the case, we direct the Assessing Officer to redo the assessments in the following lines :

(1)The tied-up grants received from the donor, Bread for the World, will be taken out of the computation of income from the income-side.

(2)All the money spent under the tied-up programmes directed by the donor also will be taken out of the computation of income from the expense-side.

(3)Any non-refundable credit balance in the personal account of Bread for the World will be treated as income in the year in which such non-refundable balance was ascertained.

(4)The expenses incurred by the assessee for house construction, reclamation of land, non-formal education programme (other than covered by the tied-up grants) will be deducted as revenue expenses.

8. Further, we make it clear that if the assessee already considered above grant as income of the assessee in its income and

expenditure account, then the finding of the Tribunal in sub para 12 (supra) is not applicable.

9. Accordingly, these appeals are remitted back to the file of the Commissioner of Income Tax (Appeals) for fresh consideration.

10. In the results, the appeals of the assessee in ITA Nos.2130 & 2131/Mds/2013 are partly allowed for statistical purposes.

Order pronounced on Friday, 28th day of August, 2015, at Chennai.

Sd/-	Sd/-
(एन.आर.एस. गणेशन))	**(चंद्र पूजारी)**
(N.R.S. GANESAN)	**(CHANDRA POOJARI)**
न्यायिक सदस्य/JUDICIAL MEMBER	**लेखा सदस्य /ACCOUNTANT MEMBER**

चेन्नई/Chennai
दिनांक/Dated:28.08.2015
KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant	3. आयकर आयुक्त (अपील)/CIT(A)	5. विभागीय प्रतिनिधि/DR
2. प्रत्यर्थी/Respondent	4. आयकर आयुक्त/CIT	6. गार्ड फाईल/GF